COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

vs.

Barry M. Miskin, M.D.,
Respondent

File No.: 16-49-14898

Docket No.: 0351-49-17

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and
Occupational Affairs ("Commonwealth") and Barry M. Miskin, M.D. ("Respondent") stipulate
as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Medicine ("Board") pursuant to the Medical
Practice Act, Act of December 20, 1985, P.L. 457, No. 112, ("Act"), as amended, 63 P.S. §§ 422.1-
422.53; the Medical Care Availability and Reduction of Error ("Mcare") Act, Act of March 20,
2002, P.L. 154, No. 13, as amended, 40 P.S. §§ 1303.101-1303.910; and/or the Act of July 2, 1993,
P.L. 345, No. 48 ("ACT 48"), as amended, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as
a medical physician and surgeon in the Commonwealth of Pennsylvania: license no. MD040353E,
which was originally issued on November 24, 1987, and which is currently set to expire on
December 31, 2018.
STIPULATED FACTS

3. The Respondent admits that the following allegations are true:

   a. Absent additional Board action, Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.

   b. Respondent's last known address on file with the Board is: 1926 Lenmore Dr, Palm Beach Gardens, FL 33410.

   c. At all relevant and material times, Respondent was authorized to practice as a medical physician and surgeon in the State of Florida, license number ME51970.

   d. On or about November 22, 2016, the State of Florida Board of Medicine ("Florida Board"), entered a Final Order and Settlement Agreement at Florida DOH Case Number 2013-16567, in which Respondent neither admitted nor denied the allegations, but Respondent agreed that the facts alleged, if proven, would constitute violations of acts, rules and/or regulations of the Florida Board, in that Respondent committed medical malpractice and failed to maintain complete and adequate medical records.

   e. Pursuant to the November 22, 2016 Final Order and Settlement Agreement, Respondent received a Letter of Concern, was ordered to pay a fine of $10,000.00, was ordered to pay costs of $8,463.75, and was ordered to complete continuing medical education.

   f. A true and correct copy of the Florida Board's November 22, 2016 Final Order and Settlement Agreement, Florida DOH Case Number 2013-16567 is attached as Exhibit A and is incorporated by reference.
ALLEGED VIOLATIONS

4. The Commonwealth alleges that the Board is authorized to suspend or revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; or impose a civil penalty under Section 908 of the Mcare Act, 40 P.S. §§ 1303.908, and/or Section 5(b)(4) of ACT 48, 63 P.S. §2205(b)(4) and/or impose the costs of investigation under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 41(4), 63 P.S. § 422.41(4), in that Respondent had a license or other authorization to practice the profession suspended, revoked, refused or otherwise disciplined by the proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

PROPOSED ORDER

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

   a. The Board finds that it is authorized to suspend or revoke, or otherwise restrict Respondent's license under Sections 41 and 42 of the Act, 63 P.S. §§ 422.41 & 422.42; or impose a civil penalty under Section 908 of the Mcare Act, 40 P.S. §§ 1303.908, and/or Section 5(b)(4) of ACT 48, 63 P.S. §2205(b)(4) and/or impose the costs of investigation under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 41(4), 63 P.S. § 422.41(4), in that Respondent had a license or other authorization to practice the profession suspended, revoked, refused or otherwise disciplined by the proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.
PUBLIC REPRIMAND

b. A PUBLIC REPRIMAND shall be placed on Respondent’s permanent disciplinary record with the Board.

CIVIL PENALTY

c. A CIVIL PENALTY of five thousand dollars ($5,000.00) is levied upon Respondent. Respondent shall tender the full sum of five thousand dollars ($5,000.00) with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days. Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

d. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

e. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

6. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.
ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

7. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

8. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent’s choosing and at Respondent’s expense when reviewing, considering and accepting the terms of this Consent Agreement. To the extent that Respondent is not represented by legal counsel, Respondent has knowingly elected to proceed without the assistance of legal counsel.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

9. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions.
by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

10. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

11. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues an Order approving and adopting this Consent Agreement.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

12. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.
AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

13. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

ENTIRE AGREEMENT

14. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

VERIFICATION OF FACTS AND STATEMENTS

15. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Amanda N. Wojciechowski, Esquire
Prosecuting Attorney

DATED: 4/11/17

Barry M. Miskin, M.D.
Respondent

DATED: 04/01/2017